

LOS ALAMOS NATIONAL LABORATORY
User Facility Agreement
No. UFA-03-(AGREEMENT NUMBER)
Between
The Regents of the University of California
(hereinafter “University”)
under the U.S. Department of Energy Contract
No. W-7405-ENG-36

AND

(COMPANY NAME)
(hereinafter “User”)

Article I: Scope of Services

The University will make available to designated employees or representatives of the User (“Participants”) certain facilities, equipment, services, information and other material as described in Appendix A (“Activity”).

Article II: General Disclaimer

The Government and the University make no expressed or implied warranty as to the condition of the research or any intellectual property or product made, or developed under this Agreement, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product. Neither the Government nor the University will be liable for special, consequential or incidental damages.

Article III: Cost

Cost resulting from the Activity will be based on full cost recovery, including depreciation and DOE added factor. The total cost to the User will not, without the User’s prior consent, exceed the estimated cost set forth in Appendix A. However, the University will have no obligation to continue the Activity if the actual cost of such performance will exceed said estimated cost. Further, the estimated cost will not operate as a cost limitation on the obligations and liabilities assumed by the User under this Agreement. The University will provide notice as soon as reasonably practicable if the actual cost to complete the Activity will exceed the estimated cost so as to allow the User to elect to provide additional funding without interruption of the Activity.

Article IV: Billing Payment Terms

- (1) The User will pay the University in the amount of **(UPFRONT MONEY)** upon receipt of the University's invoice to provide for the DOE 90-day advance funding requirements. The initial invoice must be for 120 days in order to meet the DOE 90-day advance funding requirement. The University will invoice this amount after execution of the Agreement by both parties. The Activity will not begin under this Agreement until funds are received from the User.

The University will submit invoices to the User to maintain the required 90-day advance funding balance. The User will pay these monthly invoices within 30 calendar days after receipt of invoice, until the User's total for costs incurred to the University, have reached **(TOTAL AMOUNT OF THE AGREEMENT)**.

- (3) When the total payments reach the User's total contribution, the University will no longer invoice the User. The University will continue to charge the funding balance until the account is depleted or the Activity is completed, whichever occurs first.
- (4) Upon completion of the Activity or termination of the Agreement, the University will refund any account balance to the User.
- (5) The procedures for remitting payments to the University are contained in Appendix B of the Agreement.

Article V: Admission Requirements

Users are subject to the administrative and technical supervision and control of the University, and will comply with all applicable rules of the University and DOE with regard to such Activity including safety, operating and health-physics procedures, environment protection, access to information, hours of work, and conduct. The User is required to obtain Agreements from each person as necessary to implement the provisions of the Agreement. User employees will not be considered employees of the University for any purpose.

Article VI: Property

Unless the parties otherwise agree, all equipment and test apparatus procured with funds provided by the User will be disposed of as directed by the User. Any equipment which becomes integrated into the facility becomes the property of the Government.

Article VII: Scheduling

The User understands that the University will have sole responsibility and discretion for allocating and scheduling usage of the facilities, equipment, services, materials and information needed for or involved in the Activity.

Article VIII: Materials

The User acknowledges that any material supplied by the User may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by the User at the User's expense. User will return facilities and equipment utilized in their original condition except for normal wear and tear.

Article IX: Intellectual Property Provisions

The rights of the parties in patents, technical data, copyrights and other intellectual property that may arise under this Agreement are set forth in Appendix C of this Agreement.

Article X: Nondisclosure

Protected Technology Deployment Center/User Facility ("TDC/UF") Information shall not be disclosed by the University for a period of **(DISCLOSURE)** pursuant to Appendix C, Clause IV Sub-clause F.

Article XI: Export Controls

The User acknowledges that the export of goods or technical data from the United States may require an export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

Article XII: Records and Accounting System

The User will maintain records of receipts, expenditures, and the disposition of all Government property in its custody, related to the Agreement.

Article XIII: Pre-publication Review

- A. The User will provide the University with copies of articles of any publication of information generated pursuant to this Agreement for review and comment 14 days prior to publication by the User.

- B. The User will not use the name of the University or the United States Government or their employees for any promotional purpose, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the Government.

Article XIV: Administration of the Agreement

This Agreement is entered into by the University under the authority of its prime Contract with DOE. The University will administer this Agreement in all respects. Administration of this Agreement may be transferred from the University to DOE or its designee with notice of such transfer to the User, and the University will have no further responsibilities except for the confidentiality, use and/or non-disclosure obligations of this Agreement.

Article XV: Disputes

The parties will attempt to jointly resolve all disputes arising from this Agreement. If the parties are unable to jointly resolve a dispute within a reasonable period of time, the dispute will be decided by the DOE Contracting Officer. The decision of the DOE Contracting Officer is final.

Article XVI: Indemnification

Product Liability - The User hereby agrees to hold harmless and indemnify the University and the United States Government, their officers, agents and employees, from any and all liability, claims or damages, including attorney fees and cost whatsoever, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of the making, using, or selling of a product, process or service which was derived from the work performed under this Agreement by or on behalf of the User, its assignees or licensees, provided, however, that neither the United States Government nor the University shall be considered assignees or licensees of the User as a result of reserved United States Government and University rights. General - Except for any liability resulting from any negligent or intentional acts or omissions of the University, the User hereby agrees to hold harmless and indemnify the University and the United States Government, their officers, agents and employees from any and all damages, whatsoever including but not limited to personal injury and property damage sustained as a result of, or arising out of the University's performance of the work under this Agreement.

Article XVII: Non-Competition

The User certifies that to the best of the User's knowledge, private facilities or laboratories are inadequate to perform the proposed work and the execution of this Agreement will not place the University or DOE in competition with the domestic private sector.

Article XVIII: Termination

This Agreement may be terminated by either party upon 14 days written notice to the other party. Notice will be deemed made as of the day of receipt. This Agreement may also be terminated by the University in the event of failure by the User to provide the necessary advance funding, as agreed in Article IV. In the event of termination by either party, the User is responsible for the costs incurred through the effective date of termination, as well as the costs incurred after the effective date of termination, and which are related to the termination.

**FOR The Regents of the University of
California:**

By: _____
Jerome J. Garcia

Title: Program Manager, Industrial
Partnership Office

Date:

FOR (COMPANY):

By: _____

Title: _____

Date: _____

The standard terms and conditions of this User Agreement Form have been reviewed and approved by US DOE, Albuquerque Operations Office. No change to this form may be made without DOE approval.

APPENDIX A

STATEMENT OF WORK

User Agreement No.

Pursuant to the above identified User Agreement and subject to the terms and conditions stated therein, the University shall provide, furnish, or otherwise make available to duly authorized employees or representatives of the User, the **(NAME OF FACILITY TO BE USED)** (an approved Technology Deployment Center/User Facility), equipment, services, information and/or materials for the following purpose:

Statement of Work

(THIS IS THE MUTALLY AGREED UPON STATEMENT OF WORK TO BE ACCOMPLISHED UNDER THIS AGREEMENT AND SUPPLIED BY THE LOS ALAMOS NATIONAL LABORATORY TECHNICAL CONTACT.)

Agreement Duration: (THE WINDOW OF OPPORTUNITY IN WHICH TO COMPLETE THE STATEMENT OF WORK.) from the date funding is received from the User.

Estimated Time of Use: (THE ACTUAL AMOUNT OF TIME NECESSARY FOR WORK TO BE DONE.)

Cost: (TOTAL DOLLAR AMOUNT OF THE AGREEMENT)

Contacts for company:

(COMPANY CONTRACT
ADMINISTRATOR'S FULL NAME)
(CONTRACT ADMINISTRATOR'S TITLE)
(COMPANY'S DIVISION)
(COMPANY'S MAILING ADDRESS)

Phone Number: (OF CONTRACT
ADMINISTRATOR)
Fax Number: (OF CONTRACT
ADMINISTRATOR)
e-mail: (OF ADMINISTRATOR
CONTACT)

Technical Contact
(COMPANY TECHNICAL
CONTACT'S FULL NAME)
(TECHNICAL CONTACT'S TITLE)
(DIVISION WITHIN COMPANY)
(COMPANY'S MAILING
ADDRESS)

Phone Number: (OF TECHNICAL
CONTACT)
Fax Number: (OF TECHNICAL
CONTACT)
e-mail: (OF TECHNICAL CONTACT)

Contacts for University:

Contract Administrator:

Kimberly Sherwood
Los Alamos National Laboratory
Industrial Business Development Division
2237 Trinity Drive
P. O. Box 1663, Mail Stop C334
Los Alamos, New Mexico 87545

Telephone Number: (505) 665-1305
Fax Number: (505) 665-0154
ksherwood@lanl.gov

Technical Contact:

Attn.: (LANL TECHNICAL CONTACT)
Los Alamos National Laboratory
MS (OF TECHNICAL CONTACT)
P. O. Box 1663
Los Alamos, New Mexico 87545
Phone Number: (OF TECHNICAL
CONTACT)
e-mail: (OF TECHNICAL CONTACT)

APPENDIX B

USER AGREEMENT COSTS AND BILLING

User Agreement No.

The estimated costs for the use of the **(NAME OF FACILITY TO BE USED)** as described in Appendix A are **(FUNDS IN)**. This represents full cost recovery for use of this Activity at Los Alamos National Laboratory. **[OPTIONAL: The DOE depreciation and administrative overhead costs for this work have been waived by the DOE and not included in this amount.]** These are estimated costs. The User will be charged for the actual costs incurred.

Remitting Payments: Payment must be made to The Regents of the University of California and the initial payment should be sent with an executed original copy of this Agreement to:

Los Alamos National Laboratory
Industrial Business Development Division
Attn: David Swavely
P. O. Box 462
Los Alamos, NM 87544

APPENDIX C
Patents and Technical Data Clauses
For TDC/UF Agreements
User Agreement No.

Clause I: Patent and Copyright Indemnity - Limited

The User shall fully indemnify the Government and the University and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed by the User to be performed under the Agreement to the extent such acts are not normally performed at the facility.

Clause II: Notice and Assistance Regarding Patent and Copyright Infringement

The User shall promptly report and provide reasonable assistance to the Government concerning each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the User has knowledge.

Clause III: Invention Rights

A. Definitions

1. “University” means the Operating Contractor which manages and operates the Government-owned, contractor-operated facility where the work under this Agreement is to be performed.
2. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
3. “User Invention” means any Invention of the User conceived or first actually reduced to practice in the course of or under this Agreement.
4. “University Invention” means any Invention of the University, conceived in the course of or under this Agreement.
5. “Patent Counsel” means the DOE Counsel for Intellectual Property assisting the DOE Contracting activity.

B. University’s Rights

The University may elect title to any University Invention according to the provisions of the M&O Contract.

C. User's Rights

Subject to the provisions herein, the User may elect title to any User Invention and in any resulting patent secured by the User.

D. Rights of Government

1. The User agrees to timely assign to the Government the entire right, title, and interest in any country to each User Invention where the User:
 - a. Does not elect pursuant to Appendix C to retain such rights; or
 - b. Fails to timely have a patent application filed in that country on the User Invention or decides not to continue prosecution or not to pay the maintenance fees covering the invention; or
 - c. At any time the User no longer desires to retain title.
2. The User shall provide the Government a copy of any application filed on a User Invention promptly after such application is filed, including its serial number and filing date.
3. The User hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the User Invention throughout the world.
4. The User acknowledges that the DOE has certain March-in Rights to any inventions in accordance with 48 CFR 27.304-1(g).
5. User agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any invention or discovery, regardless of when conceived or actually reduced to practice or acquired by the User, which is incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement.
6. The User agrees to submit on request periodic reports to DOE no more frequently than annually on the utilization of a User Invention or on efforts to obtain such utilization that are being made by the User or its licensees or assignees.

E. Invention Report and Election

1. The User shall furnish the Patent Counsel a written report containing full and complete technical information concerning each User Invention within six months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use or publication of such invention known to the User. If User wishes to elect title to the Invention, such report shall contain User's notice of election of title.
2. The University's contract with DOE requires that University Inventions will be reported to DOE. In addition, the University agrees to disclose to the User any University Inventions promptly.

F. Preference for United States Industry

Notwithstanding any other provision of this clause, the User agrees that neither it nor any assignees will grant to any person the exclusive right to use or sell any User Invention in the United States unless such person agrees that any products embodying the User Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the User or its assignees that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

Clause IV: Rights in Technical Data

A. Definitions:

1. "Technical Data" as used herein means recorded information of a scientific or technical nature including computer software.
2. "Proprietary Data" means technical data which embody trade secrets developed at private expense, outside of this Agreement, provided that such data:
 - a. Are not generally known or available from other sources without obligation concerning their confidentiality,
 - b. Have not been made available by the owner to others without obligation concerning their confidentiality, and

- c. Are not already available to the University or the Government without obligation concerning their confidentiality.
- 3. “Unlimited Rights” means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.
- 4. “Protected TDC/UF Information” means information generated in the performance of the Agreement which is marked as being TDC/UF Protected Information by the User or the University and which could have been Proprietary Data had it been obtained from a non-Federal entity outside of this Agreement.
- B. The User agrees to furnish to the University those data, if any, which are:
 - 1. essential to the performance of work under this Agreement by the University personnel, or
 - 2. necessary for the health and safety of such personnel in the performance of the work. Any data furnished to the University shall be deemed to have been delivered with Unlimited Rights unless marked as “Proprietary Data” of the User.
- C. The User agrees to deliver to DOE a nonproprietary description of the work to be performed under the Agreement.
- D. All Technical Data produced in the performance of work under this Agreement by the University shall, prior to any dissemination, publication, or further disclosure of the data be made available to the User for review and appropriate marking where such data contain or would disclose the User’s Proprietary Data. The Government has the right to challenge the proprietary nature of any markings on data.
- E. The Government is required by law to not disclose properly marked Proprietary Data of the User outside the Government and the University. The University agrees not to use or disclose such Proprietary Data except when necessary for the performance of this Agreement and compliance with the M&O Contract.
- F. Either the User or the University may designate as TDC/UF Protected Information Technical Data produced by its employees, and with the agreement of the other party, information produced by the other party’s employees. All such information shall be appropriately marked. For the period of time indicated in Article X of the User Facility Agreement, which shall not exceed five years from the date the information is produced, neither the User nor the University shall further disclose marked TDC/UF Protected

Information except:

1. as necessary to perform this Agreement;
 2. as required by the Government on-site;
 3. as necessary to comply with court order;
 4. as necessary for the licensing of intellectual property developed under this Agreement, provided similar provisions for non-disclosure are included in such licensing; or
 5. as otherwise required by law.
- G. The University and User will cooperate to separate User's Proprietary Data from that data generated under the Agreement so that User may remove its Proprietary Data. Subject to paragraph F. above, the Government shall have Unlimited Rights in any Technical Data (including Proprietary Data) which are not removed from the facility by or before termination of the Agreement. Subject to paragraph F. above, the Government shall have Unlimited Rights in any Technical Data and any Proprietary Data which are incorporated into the facility or equipment under the Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation. Subject to paragraph F. above, the University shall have the unlimited right to perform similar or identical services for other users at any time as long as the User's Proprietary Data are not utilized.
- H. The User shall grant to the Government and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Government purposes to publish, distribute, create derivative works, translate, duplicate, exhibit, and perform any technical data first produced in the performance of this Agreement in which the User is the author of any copyrightable expression of such technical data.